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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCIS LOWELL SEYMOUR,

Defendant and Appellant.

A133593

**(Mendocino County
Super. Ct. No. SCUKCR10-
15470)**

Francis Lowell Seymour (Seymour) appeals from a judgment of conviction and sentence imposed after he entered guilty pleas to charges in three cases. His attorney has filed a brief seeking our independent review of the record, pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (see *Anders v. California* (1967) 386 U.S. 738), in order to determine whether there is any arguable issue on appeal. We find no arguable issue and affirm.

I. FACTS AND PROCEDURAL HISTORY

On October 21, 2010, Seymour entered guilty pleas in two cases. In superior court case number SCUKCR10-12818, Seymour entered a guilty plea to one count of possession of methamphetamine for sale (Health & Saf. Code, § 11378). In superior court case number SCUKCR10-13789, he also entered a guilty plea to one count of possession of methamphetamine for sale (Health & Saf. Code, § 11378) and admitted an on-bail enhancement (Pen. Code, § 12022.1).

As stated by the district attorney, a factual basis existed for the pleas in that Seymour was found in possession of 18 baggies containing a total of 23.8 grams of methamphetamine on April 1, 2010, and nine baggies containing a total of 4.56 grams of methamphetamine on June 21, 2010.

At the plea hearing, Seymour was advised that he faced a maximum aggregate confinement time of five years, eight months, since the sentence on the two cases would run consecutively due to the on-bail enhancement. Seymour was also told that he was presumptively ineligible for probation in light of his past record. Seymour declined to enter a waiver under *People v. Arbuckle* (1978) 22 Cal.3d 749 (*Arbuckle*) to allow sentencing by a judge other than the judge who accepted his guilty pleas. The cases were put over for sentencing.

Before he was sentenced in cases 12818 and 13789, Seymour was charged in a new case, SCUKCRCR10-15470. According to the probation report in case 15470, police observed Seymour discarding a bag containing approximately 11 grams of methamphetamine as he fled from officers. Seymour also allegedly admitted he had a “ ‘ meth pipe’ ” on his person, and officers found a small amount of marijuana in his backpack.

On April 14, 2011, Seymour entered a guilty plea in case 15470 to one count of possession of methamphetamine for sale (Health & Saf. Code, § 11378) and admitted four special allegations pertaining to his on-bail status and prior convictions. The plea agreement called for a suspended sentence and grant of probation, so that Seymour could enter and complete the Delancey Street program. A condition of the agreement was that, if he was not accepted into Delancey Street, he would return to court and be allowed to withdraw his plea and admissions in case 15470. At this hearing, Seymour entered an *Arbuckle* waiver.

On July 14, 2011, Seymour returned to court after having been declined admission to the Delancey Street program. He was permitted to withdraw his plea and admissions in case 15470, and that case was set for trial, with the two other cases set to trail.

On August 10, 2011, Seymour entered a new plea of guilty to one count of possession of methamphetamine for sale (Health & Saf. Code, § 11378) in case 15470, pursuant to a plea agreement calling for a total sentence of six years, four months, on all three outstanding cases combined. The prosecutor stated the agreement on the record: Seymour would enter a guilty plea to possession of methamphetamine for sale in case 15470, and the remaining charges and allegations in that case would be dismissed; as a package sentence for this offense and the offenses to which he pled guilty in his two prior cases (12818 and 13789), Seymour would receive a total combined term of imprisonment of six years, four months. Both Seymour and his attorney expressly agreed to that disposition.

Seymour then stated that he understood and waived his constitutional rights enumerated by the court, including his right to appeal, and entered his guilty plea and admissions in case 15470. Based on counsel's stipulation to the preliminary hearing testimony, the court found a factual basis for the plea. In addition, Seymour entered an *Arbuckle* waiver.¹

On September 23, 2011, sentencing took place before a different judge than had accepted the pleas on the three cases. Seymour was represented by counsel. Neither Seymour nor his attorney objected to the sentence being pronounced by a different judge.

In case 15470, the court imposed the upper term of three years for possession of methamphetamine for sale, and deemed this the principal term. Credits of 292 actual days and 292 conduct days were awarded, for a total of 584 days credit in case 15470. A \$600 restitution fine (Pen. Code, § 1202.4) and a \$600 suspended parole restitution fine (Pen. Code, § 1202.45) were also imposed.

¹ "THE COURT: Now, counsel, I understand there will be an *Arbuckle* waiver. [¶] [DEFENSE COUNSEL]: Yes. [¶] THE COURT: From this point forward, every decision which will be made in your case concerning your decision whether – well, every other decision which will be made in your case will be made by a judge of this court, but only after there's first been read and prepared a probation officer's report. That report has not yet been prepared or read; therefore, I can't tell you all the particulars of your sentence except to tell you the time – jail time cannot exceed the maximum of six years, four months. [¶] Do you understand that? [¶] THE DEFENDANT: Yes."

In case 13789, the court imposed a consecutive sentence of eight months (one-third the midterm), plus a consecutive two-year term for the on-bail enhancement. Credits of two actual and two conduct days were awarded, for a total of four days credit. A \$600 restitution fine and \$600 suspended parole restitution fine were also imposed.

In case 12818, the court imposed a consecutive sentence of eight months (one-third the midterm). The court awarded a total of two days credit. A \$200 restitution fine and \$200 suspended parole restitution fine were also imposed.

The total term of imprisonment was six years, four months, in conformity with the plea agreement. Neither Seymour nor his attorneys objected to any aspect of the sentence imposed.

On October 28, 2011, Seymour filed a notice of appeal in pro per in this case, contending that the appeal was based on a sentence or other matters occurring after the plea that do not affect the validity of the plea.

II. DISCUSSION

Seymour's appellate counsel represents in the opening brief in this appeal that she wrote to Seymour and advised him of the filing of a *Wende* brief and his opportunity to personally file his own supplemental brief within 30 days thereafter.

We have not received any supplemental brief from Seymour.

On February 8, 2012, we received correspondence from appellate counsel, forwarding to us a handwritten letter from Seymour bearing a date of February 6, 2012. The letter, addressed from Seymour to counsel, reads as follows: "I got your letter not happy It's not write [sic] I do not know how to read that good or spell I need your help with a letter I know you can find errors with the wende thing that could help me errors with the new law things errors with the law pass before oct 1 errors with the judge's and errors in the sentencing transcripts I need help with this I can't do this by myself I need your help to do what we have to do to find errors and the mistake's [sic] that was maid [sic] I was sold out a[nd] I know this was not legal I need a attorney to help me with this [And] one more thing CDC has not give [sic] me my day's [sic] and credits off my sentence that a [sic] errors."

We find no arguable issues on appeal.

There are no legal issues that require further briefing.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.